



US Army Corps
of Engineers

Construction Bulletin

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CEMP-C

Subject: Applicability of OSHA's Multi-Employer Policy to Federal Agencies

Applicability: GUIDANCE

1. REFERENCE:

a. Department of Labor, Occupational Safety and Health Administration (OSHA) revisions to 29 CFR Part 1960 "Basic Program Elements for Federal Employee Occupational Safety and Health Programs" - Final Rule; Federal Register / Vol. 60, No. 128 / July 5, 1995.

b. CESO-ZA memorandum to USACE Commanders, subject: Interim Guidance - OSHA Compliance Inspections of USACE Contractor Operations Under Their Multi-Employer Worksite Policy Now Applied to Federal Agencies, dated 28 Feb 96.

2. PURPOSE. This Construction Bulletin (CB) outlines the revisions to 29 CFR 1960 that amend OSHA Multi-Employer worksite policy. This CB will also present the Office of the Chief Counsel's interim position towards the new policy and provide guidance in this respect.

3. BACKGROUND.

a. In the private sector worksites, where the working environment is controlled by more than one employer (e.g., activities involving subcontractors), OSHA's policy has been to hold multiple employers responsible for the correction of workplace hazards. Thus, when safety or health hazards occur on multiple-employer worksites, OSHA will issue citations not only to the employer whose employees were exposed to the violation, but to other employers such as general contractors or host employers, who can reasonably be expected to have identified or corrected the hazard by virtue of their supervisory role over the worksite, i.e., "controlling employer". Formerly, federal agencies, such as USACE, managing contracts were not considered by OSHA to be subject to the "multi-employer" rule.

and accordingly, were not responsible or cited for workplace hazards caused by the contractor(s). Federal agencies are only responsible for the health and safety of their own employees.

b. Through the revision to the multi-employer worksite policy which was effective on 5 July 1995, OSHA claims that the revisions clarified its intention that federal agencies are required to comply with all occupational safety and health standards, and, generally, to assume responsibility for worker protection in a manner comparable to private employers, including multi-employer workplaces (in comparable circumstances). To date, contractor-created safety violations at one military installation have resulted in notices directing the Corps to alleviate worksite hazards. Notices of Unsafe or Unhealthful Working Conditions (notices) were also furnished to the installation commander where the work was performed.

4. GUIDANCE.

a. The Office of the Chief Counsel has issued a legal analysis regarding OSHA's authority to issue multi-employer worksite notices of violation to federal agencies including USACE. The Office of the Chief Counsel has some concern as to the legality of OSHA's application of the multi-employer doctrine to federal agencies. Consequently, the Office of the Chief Counsel has forwarded their opinion to Army General Counsel with a request that the opinion be reviewed and forwarded to DOD General Counsel for clarification of the policy and coordination with the Department of Labor.


b. HQUSACE has developed the following interim guidance which needs to be followed when notices pursuant to the multi-employer worksite policy are issued to USACE by OSHA: (1) Construction field personnel are advised to maintain a positive and professional working relationship with OSHA and to not engage in any argumental discussions regarding the notices. Construction field personnel receiving notices where USACE is being cited as a "controlling employer" must immediately forward the notices to their District Counsel and a copy to the District Safety Office for resolution and ensure that hazardous conditions identified by OSHA during their inspections of our contractor operations are corrected by the prime contractor as soon as possible; and (2) district commanders will respond to OSHA in writing. For uniformity, a draft reply has been prepared by the Office of the Chief Counsel and was forwarded to all district commanders for their use.

c. In the meantime, no significant changes in our methods of ensuring contract compliance should occur until Army and DOD have had the opportunity to examine this issue and prepare a unified legal and policy position. We will continue to carry out quality assurance oversight of contractor's safety practices using current procedures while safety will remain integral to our mission accomplishment. You will be informed of any developments in this matter as soon as they come up.

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5. This CB was coordinated with the following HQUSACE organizations: Office of the Chief Counsel (CECC-K); Safety and Occupational Health Office (CESO-ZA); and Operations, Construction and Readiness Division (CECW-O).



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